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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,347	12/29/2000	William D. Rupp	046700-5014	8394
28977	7590	10/21/2005	EXAMINER	
MORGAN, LEWIS & BOCKIUS LLP 1701 MARKET STREET PHILADELPHIA, PA 19103-2921			PATEL, JAGDISH	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/753,347	RUPP ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JAGDISH PATEL	3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 6-10, 13, 14 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11, 12 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/1/05</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Invention I and species I-A with traverse has been acknowledged. However, the applicant has not provided any statement or persuasive argument in support of the traversal. Accordingly, the restriction/election is made final and claims 1-5, 11-12 and 15 have been examined and Claims 6-10, 13,14 and 16 have been withdrawn from further consideration.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claims 1-5, 11-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (US 6,243,691) (Fisher) and further in view of Odom et al. (US 6,058,379) (Odom).

Per claim 1, Fisher teaches a method of configuring a bid adjustment mechanism in an online auction, (bidder and auctioneer interfaces, p.12) comprising the steps of:

(a) displaying a bid adjustment mechanism configuration interface, (“proxy bidding”, col. 8 L 56+, col. 12 L 32-61 and Figures 2 and 7 ) and

(b) setting a bid adjustment value for the bid adjustment mechanism using the configuration interface such that when the bid adjustment mechanism is actuated, a bid is adjusted by the bid adjustment value set in the configuration interface.

(see col. 12 L 37+ “bidder places a bid for the maximum amount they are willing to pay”, this inherently teaches that the maximum amount is set as bid adjustment value, furthermore, the proxy feature (i.e. the bid adjustment mechanism) causes the current bid up to an amount higher than the new bid, up to the maximum amount of the currently high bidders proxy bid, both features clearly anticipate step (b) ).

Fisher fails to teach that the bid adjustment value is set based on input provided by a bidder. Odom, in the same field of endeavor, teaches a bid adjustment mechanism, wherein the bid adjustment value is set by a bidder (see col. 8 L 8-16, the bid increment may be set by the seller regardless of the bid or value of the item).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Fisher such that the bid adjustment value is set based on the bidder input because this would provide flexibility to the bidder

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Claim 2: wherein the bid adjustment mechanism is a button on a graphical user interface displayed to the bidder.

("bid" button, Figure 2)

Regarding claims 3-5 Fisher teaches selecting a bid adjustments type which corresponds to an absolute value or a percentage of a previous bid (see col. 12 L 33+, bidding increment amount and percentage, noting that the increment amount is in Dollar amount).

Claims 11 and 12 are analyzed in accordance with method claims 1 and 3 respectively.

Claims 15 is a product claim corresponding to 1.

### ***Conclusion***

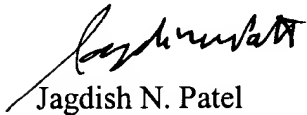
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

10/17/05